



Office of the Clerk  
UNITED STATES COURT of APPEALS for the NINTH CIRCUIT  
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**Amendments to the  
Federal Rules of Appellate Procedure  
Effective, January 1, 2006**

**All FRAP Rules listed below were amended April 25, 2005 and are effective December 1, 2005. All deletions are redlined through and the new text is highlighted.**

FRAP RULES	TITLE	New or Revised	PURPOSE OF AMENDMENT
FRAP 4(a)(6)	Appeal as of Right - When Taken - Reopening the Time to File an Appeal	Revised	To specify more clearly what type of “notice” of the entry of a judgment or order precludes a party from later moving to reopen the time to appeal. To address confusion about what type of “notice” triggers the 7-day period to bring a motion to reopen. To set forth more logically the conditions that must be met before a district court may reopen the time to appeal.
FRAP 26(a)(4)	Computing and Extending Time	Revised	In 1998 when the Appellate Rules were revised, the phrase, “Washington’s Birthday” was replaced with “President’s Day.” The Advisory Committee concluded that this was a mistake. The Committee has now amended Rules 26(a)(4) and 45(a)(2) to correct this mistake.
FRAP 45 (a)(2)	Clerk’s Duties - When Court is Open	Revised	Has been amended to refer to the third Monday in February as “Washington’s Birthday.” A federal statute officially designates the holiday as “Washington’s Birthday,” reflecting the desire of Congress specially to honor the first president of the United States. <i>See</i> 5 U.S.C. §6103(a).

<b>FRAP RULES</b>	<b>TITLE</b>	<b>New or Revised</b>	<b>PURPOSE OF AMENDMENT</b>
FRAP 27(d)(1)(E)	Form of Papers; Page Limits; and Number of Copies - Typeface and type styles	New	To provide that a motion, a response to a motion, and a reply to a response to a motion must comply with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6). The purpose of the amendment is to promote uniformity in federal appellate practice and to prevent the abuses that might occur if no restrictions were placed on the size of typeface used in motion papers.
FRAP 28(c)	Reply Brief	Revised	Amended to delete a sentence that authorized an appellee who had cross-appealed to file a brief in reply to the appellant's response. All rules regarding briefing in cases involving cross-appeals have been consolidated into <a href="#">new Rule 28.1</a>
FRAP 28.1	Cross-Appeals	New	To address conflicting local rules regarding number and length of briefs, the colors of the covers of briefs, and the deadlines for serving and filing briefs.
FRAP 32(a)(7)(C)	Form of Briefs, Appendices, and Other Papers - Certificate of Compliance	Revised	Amended to add cross-references to new Rule 28.1, which governs briefs filed in cases involving cross-appeals.
FRAP 34(d)	Oral Argument - Cross-Appeals and Separate Appeals	Revised	To reflect the fact that, as part of an effort to collect within one rule all provisions regarding briefing in cases involving cross-appeals, former Rule 28(h) has been abrogated and its contents moved to new Rule 28.1(b)

FRAP RULES	TITLE	New or Revised	PURPOSE OF AMENDMENT
FRAP 35(a)	En Banc Determination - When Hearing or Rehearing En Banc May be Ordered	Revised	Amended to adopt the case majority approach as a uniform national interpretation of §46(c).

## FRAP 4

### APPEAL AS OF RIGHT - WHEN TAKEN

(a) Appeal in a Civil Case.

- (1) **Time for Filing a Notice of Appeal.**
- (2) **Filing Before Entry of Judgment.** A notice of appeal filed after the court announces a decision or order — but before the entry of the judgment or order — is treated as filed on the date of and after the entry.
- (3) **Multiple Appeals.** If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later.
- (4) **Effect of a Motion on a Notice of Appeal.**
- (5) **Motion for Extension of Time.**
- (6) **Reopening the Time to File an Appeal.** The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:
  - (A) the court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77(d) of the entry of the judgment or order sought to be appealed within 21 days after entry;
  - (B) the motion is filed within 180 days after the judgment or order is entered or within 7 days after the moving party receives notice of the entry, whichever is earlier; **and**
  - ~~(B) the court finds that the moving party was entitled to notice of the entry of the judgment or order sought to be appealed but did not receive the notice from the district court or any party within 21 days after entry; and~~
  - (C) the court finds that no party would be prejudiced.

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## FRAP 26

## COMPUTING AND EXTENDING TIME

- (a) **Computing Time.** The following rules apply in computing any period of time specified in these rules or in any local rule, court order, or applicable statute:
- (1) Exclude the day of the act, event, or default that begins the period.
  - (2) Exclude intermediate Saturdays, Sundays, and legal holidays when the period is less than 11 days, unless stated in calendar days.
  - (3) Include the last day of the period unless it is a Saturday, Sunday, legal holiday, or — if the act to be done is filing a paper in court — a day on which the weather or other conditions make the clerk’s office inaccessible.
  - (4) As used in this rule, “legal holiday” means New Year’s Day, Martin Luther King, Jr.’s Birthday, ~~Presidents’ Day~~ **Washington’s Birthday**, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans’ Day, Thanksgiving Day, Christmas Day, and any other day declared a holiday by the President, Congress, or the state in which is located either the district court that rendered the challenged judgment or order, or the circuit clerk’s principal office.
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## FRAP 45

### CLERK’S DUTIES

- (a) **General Provisions.**
- (1) **Qualifications.**
  - (2) **When Court Is Open.** The court of appeals is always open for filing any paper, issuing and returning process, making a motion, and entering an order. The clerk’s office with the clerk or a deputy in attendance must be open during business hours on all days except Saturdays, Sundays, and legal holidays. A court may provide by local rule or by order that the clerk’s office be open for specified hours on Saturdays or on legal holidays other than New Year’s Day, Martin Luther King, Jr.’s Birthday, ~~Presidents’ Day~~ **Washington’s Birthday**, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans’ Day, Thanksgiving Day, and Christmas Day.
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## **FRAP 27**

### **MOTIONS**

- (a) **In General.**
- (b) **Disposition of a Motion for a Procedural Order.**
- (c) **Power of a Single Judge to Entertain a Motion.**
- (d) **Form of Papers; Page Limits; and Number of Copies.**
  - (1) **Format.**
    - (A) **Reproduction.** A motion, response, or reply may be reproduced by any process that yields a clear black image on light paper. The paper must be opaque and unglazed. Only one side of the paper may be used.
    - (B) **Cover.** A cover is not required but there must be a caption that includes the case number, the name of the court, the title of the case, and a brief descriptive title indicating the purpose of the motion and identifying the party or parties for whom it is filed. If a cover is used, it must be white.
    - (C) **Binding.** The document must be bound in any manner that is secure, does not obscure the text, and permits the document to lie reasonably flat when open.
    - (D) **Paper size, line spacing, and margins.** The document must be on 8½ by 11 inch paper. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.
    - (E) **Typeface and type styles.** The document must comply with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6).

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## **FRAP 28**

## BRIEFS

- (a) Appellant's Brief.
  - (b) Appellee's Brief.
  - (c) Reply Brief. The appellant may file a brief in reply to the appellee's brief. ~~An appellee who has cross-appealed may file a brief in reply to the appellant's response to the issues presented by the cross-appeal.~~ Unless the court permits, no further briefs may be filed. A reply brief must contain a table of contents, with page references, and a table of authorities — cases (alphabetically arranged), statutes, and other authorities — with references to the pages of the reply brief where they are cited.
  - (d) References to Parties.
  - (e) References to the Record.
  - (f) Reproduction of Statutes, Rules, Regulations, etc.
  - (g) [Reserved]
  - (h) ~~Briefs in a Case Involving a Cross-Appeal. If a cross-appeal is filed, the party who files a notice of appeal first is the appellant for the purposes of this rule and Rules 30, 31, and 34. If notices are filed on the same day, the plaintiff in the proceeding below is the appellant. These designations may be modified by agreement of the parties or by court order. With respect to appellee's cross-appeal and response to appellant's brief, appellee's brief must conform to the requirements of Rule 28(a)(1)-(11). But an appellee who is satisfied with appellant's statement need not include a statement of the case or of the facts.~~ [Reserved]
  - (i) Briefs in a Case Involving Multiple Appellants or Appellees.
  - (j) Citation of Supplemental Authorities.
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## **FRAP 28.1**

### **CROSS-APPEALS**

- (a) **Applicability.** This rule applies to a case in which a cross-appeal is filed. Rules 28(a)-(c), 31(a)(1), 32(a)(2), and 32(a)(7)(A)-(B) do not apply to such a case, except as otherwise provided in this rule.
- (b) **Designation of Appellant.** The party who files a notice of appeal first is the appellant for the purposes of this rule and Rules 30 and 34. If notices are filed on the same day, the plaintiff in the proceeding below is the appellant. These designations may be modified by the parties' agreement or by court order.
- (c) **Briefs.** In a case involving a cross-appeal;
  - (1) **Appellant's Principal Brief.** The appellant must file a principal brief in the appeal. That brief must comply with Rule 28(a).
  - (2) **Appellee's Principal and Response Brief.** The appellee must file a principal brief in the cross-appeal and must, in the same brief, respond to the principal brief in the appeal. That appellee's brief must comply with Rule 28(a), except that the brief need not include a statement of the case or a statement of the facts unless the appellee is dissatisfied with the appellant's statement.
  - (3) **Appellant's Response and Reply Brief.** The appellant must file a brief that responds to the principal brief in the cross-appeal and may, in the same brief, reply to the response in the appeal. That brief must comply with Rule 28(a)(2)-(9) and (11), except that none of the following need appear unless the appellant is dissatisfied with the appellee's statement in the cross-appeal;
    - (A) the jurisdictional statement;
    - (B) the statement of the issues;
    - (C) the statement of the case;
    - (D) the statement of the facts; and
    - (E) the statement of the standard of review.
  - (4) **Appellee's Reply Brief.** The appellee may file a brief in reply to the response in the cross-appeal. That brief must comply with Rule 28(a)(2)-(3) and (11) and must be limited to the issues presented by the cross-appeal.

- (5) **No Further Briefs.** Unless the court permits, no further briefs may be filed in a case involving a cross-appeal.
- (d) **Cover.** Except for filings by unrepresented parties, the cover of the appellant's principal brief must be blue; the appellee's principal and response brief, red; the appellant's response and reply brief, yellow; the appellee's reply brief, gray; an intervenor's or amicus curiae's brief, green; and any supplemental brief, tan. The front cover of a brief must contain the information required by Rule 32(a)(2).
- (e) **Length.**
- (1) **Page Limitation.** Unless it complies with Rule 28.1(e)(2) and (3), the appellant's principal brief must not exceed 30 pages; the appellee's principal and response brief, 35 pages; the appellant's response and reply brief, 30 pages; and the appellee's reply brief, 15 pages.
- (2) **Type-Volume Limitation.**
- (A) The appellant's principal brief or the appellant's response and reply brief is acceptable if:
- (i) it contains no more than 14,000 words; or
  - (ii) it uses a monospaced face and contains no more than 1,300 lines of text.
- (B) The appellee's principal and response brief is acceptable if;
- (i) it contains no more than 16,500 words; or
  - (ii) it uses a monospaced face and contains no more than 1,500 lines of text.
- (C) The appellee's reply brief is acceptable if it contains no more than half of the type volume specified in Rule 28.1(e)(2)(A).
- (3) **Certificate of Compliance.** A brief submitted under Rule 28.1(e)(2) must comply with Rule 32(a)(7)(C).



**(f) Time to Serve and File a Brief.** Briefs must be served and filed as follows:

- (1) the appellant's principal brief, within 40 days after the record is filed;**
  - (2) the appellee's principal and response brief, within 30 days after the appellant's principal brief is served;**
  - (3) the appellant's response and reply brief, within 30 days after the appellee's principal and response brief is served; and**
  - (4) the appellee's reply brief, within 14 days after the appellant's response and reply brief is served, but at least 3 days before argument unless the court, for good cause, allows a later filing.**
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## **FRAP 32**

### **FORM OF BRIEFS, APPENDICES, AND OTHER PAPERS**

**(a) Form of a Brief.**

**(C) Certificate of Compliance.**

- (i) A brief submitted under Rules 28.1(e)(2) or 32(a)(7)(B) must include a certificate by the attorney, or an unrepresented party, that the brief complies with the type-volume limitation. The person preparing the certificate may rely on the word or line count of the word-processing system used to prepare the brief. The certificate must state either:**
    - the number of words in the brief; or**
    - the number of lines of monospaced type in the brief.**
  - (ii) Form 8 in the Appendix of Forms is a suggested form of a certificate of compliance. Use of Form 8 must be regarded as sufficient to meet the requirements of Rules 28.1(e)(3) and 32(a)(7)(C)(i).**
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## FRAP 34

### ORAL ARGUMENT

- (a) **In General.**
  - (b) **Notice of Argument; Postponement.**
  - (c) **Order and Contents of Argument.**
  - (d) **Cross-Appeals and Separate Appeals.** If there is a cross-appeal, Rule **28(h)** **28.1(b)** determines which party is the appellant and which is the appellee for purposes of oral argument. Unless the court directs otherwise, a cross-appeal or separate appeal must be argued when the initial appeal is argued. Separate parties should avoid duplicative argument.
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## FRAP 35

### EN BANC DETERMINATION

- (a) **When Hearing or Rehearing En Banc May Be Ordered.** A majority of the circuit judges who are in regular active service **and who are not disqualified** may order that an appeal or other proceeding be heard or reheard by the court of appeals en banc. An en banc hearing or rehearing is not favored and ordinarily will not be ordered unless:
  - (1) en banc consideration is necessary to secure or maintain uniformity of the court's decisions; or
  - (2) the proceeding involves a question of exceptional importance.

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